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July 2013

## EEOC v. ABM Industries Inc.

Judge Bernard Zimmerman

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## EEOC v. ABM Industries Inc.

### Keywords

EEOC, ABM Industries, CV9-4593 BZ, Consent Decree, Disparate Treatment, Retaliation, Race, National Origin, Hispanic or Latino, Service, Employment Law, Title VII

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13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA

15 EQUAL EMPLOYMENT  
 16 OPPORTUNITY COMMISSION

Case No. CV9-4593 BZ

17 Plaintiff,

CONSENT DECREE

18 v.

19 ABM INDUSTRIES INC.,

20 Defendant.

21 Plaintiff Equal Employment Opportunity Commission ("Commission") filed this action  
 22 under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct  
 23 alleged unlawful employment practices on the basis of discrimination based on race/national origin  
 24 and retaliation, and to provide appropriate relief to Salvador Gallardo, Franklin Colindres, Jose  
 25 Tasayco, Jose Heyliger, Marta Gomez, Ramona Hernandez and Daniel Rodas, and similarly situated  
 26 Hispanics whom the Commission alleged were adversely affected by such practices. The  
 27 Commission alleged that Defendant ABM Industries Incorporated subjected Salvador Gallardo,  
 28 Franklin Colindres, Jose Tasayco, Jose Heyliger, Marta Gomez, Ramona Hernandez and Daniel  
 Rodas, and similarly situated Hispanics to unlawful discrimination based on their race/national  
 origin in violation of Title VII, and subjected Marta Gomez, Ramona Hernandez, Daniel Rodas and  
 Salvador Gallardo to retaliation for opposing that discrimination and filing charges with the  
 Commission. Defendant has denied the above allegations and further claimed that the correct

CONSENT DECREE

NDCA NO. CV-09-04593 BZ

1 employer of the named charging parties and similarly situated Hispanic janitors covered by the SEIU  
 2 Local 87 collective bargaining agreement was ABM Janitorial Services—Northern California and/or  
 3 its successor company ABM Services, Inc. The Commission and Defendant ABM Industries  
 4 Incorporated, ABM Janitorial Services—Northern California and its successor company ABM  
 5 Services, Inc. (collectively ABM) now seek to resolve this action as to each other and as to Salvador  
 6 Gallardo, Franklin Colindres, Jose Tasayco, Jose Heyliger, Marta Gomez, Ramona Hernandez and  
 7 Daniel Rodas, (“Charging Parties”) and similarly situated Hispanics, without further contested  
 8 litigation through the instant Consent Decree. This resolution does not constitute an admission of  
 9 liability on the part of ABM, nor constitute a finding on the allegations stated in the Commission’s  
 10 Complaint, nor does it in any way supersede, amend, or otherwise change the collective bargaining  
 11 agreement between Service Employees International Union (SEIU) Local 87 and the San Francisco  
 12 Maintenance Contractors’ Association.

13 The Court has reviewed this Consent Decree in light of the pleadings, the record herein, and  
 14 the applicable law, and now approves this Consent Decree.

15 THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

16 **GENERAL PROVISIONS**

17 1. This Court has jurisdiction over the subject matter and the parties to this action. This  
 18 Court retains jurisdiction over this Consent Decree during its term.

19 2. This Consent Decree constitutes a full and final resolution of the Commission’s  
 20 claims against ABM in this action.

21 3. This Consent Decree will become effective upon its entry by the Court.

22 4. This Consent Decree is final and binding upon the parties to it, their successors and  
 23 assigns.

24 5. The Commission and ABM will each bear its own costs and attorneys fees in this  
 25 action.

26 **GENERAL INJUNCTIVE RELIEF**

27 6. ABM and its current officers, managers, supervisors, agents, employees, and all  
 28 persons in active concert or participation with them are enjoined from discriminating based on

1 race/national origin including permitting the existence of a work environment that is hostile to  
 2 employees because of their race/national origin, as prohibited under Title VII.

3 7. ABM and its current officers, managers, supervisors, agents, employees, and all  
 4 persons in active concert or participation with them are enjoined from engaging in, implementing or  
 5 permitting any action, policy or practice which retaliates against Charging Parties, or any other  
 6 individual, for having testified or participated in any manner in the Commission's investigation and  
 7 the proceedings in this case.

### 8 **SPECIAL INJUNCTIVE RELIEF**

#### 9 **Training**

10 8. During the term of this decree, ABM will conduct anti-discrimination/diversity  
 11 trainings and education within the jurisdiction covered by SEIU Local 87 as follows:

12 (a) Provide an annual notice in English, Arabic, Chinese and Spanish, to all employees  
 13 on workplace diversity, their rights to a workplace free from discrimination and retaliation,  
 14 and their obligations not to harass or otherwise discriminate based on race/national origin;

15 (b) Annual training of all supervisors and forepersons on workplace diversity and anti-  
 16 discrimination and their obligations not to discriminate, harass or retaliate on the basis of  
 17 race/national origin; their obligations to provide employees with a workplace free from  
 18 discrimination and harassment on the basis of race/national origin and retaliation; and on  
 19 their responsibilities and obligations if an employee complains to them about discrimination  
 20 or harassment on the basis of race/national origin or retaliation, or if they observe  
 21 discrimination or harassment on the basis of race/national origin or retaliation;

22 (c) Two hour refresher training of all human resources personnel on how to deal with  
 23 employee complaints of discrimination on the basis of race/national origin or retaliation; how  
 24 to investigate complaints of discrimination on the basis of race/national origin or retaliation;  
 25 how to institute policies, practices and training which will serve to correct the effects of past  
 26 discrimination on the basis of race/national origin or retaliation and prevent future  
 27 discrimination on the basis of race/national origin and retaliation, and promote acceptance of  
 28 diversity in the workplace.



1 The initial distribution of the notice specified in Paragraph 8(a) above, and the initial training  
2 specified in Paragraphs 8(b) above will take place within sixty (60) days of the entry of this decree.  
3 The refresher training specified in Paragraph 8(c) above will take place during the term of this  
4 Consent Decree.

5 **Policy Enforcement**

6 9. ABM will consistently enforce its policy regarding materials discarded by building  
7 tenants within the jurisdiction covered by SEIU Local 87.

8 **Posting**

9 10. In the interest of preventing future discrimination based on race/national origin, ABM  
10 will prepare and post the following at each worksite within the jurisdiction covered by SEIU Local  
11 87 in a location accessible to all employees:

12 (a) The procedures found in the collective bargaining agreement through which a  
13 temporary employee can achieve a permanent assignment. ABM will also provide these  
14 procedures to all new hires in its new hire information packet.

15 (b) A list of all permanent employees in the building, their seniority date, and the work  
16 areas to which they are assigned. This list will be updated whenever an individual achieves  
17 permanent status in a building. This list will include individuals who are permanently  
18 assigned to a building but are on temporary assignment elsewhere, or on any form of leave of  
19 absence.

20 (c) A notice that any questions regarding temporary assignment should be directed to  
21 SEIU Local 87.

22 11. ABM will post a Notice to Employees in all workplaces covered by SEIU Local 87,  
23 subject to approval by the property owner. The Notice is attached as Exhibit 1 to this Consent  
24 Decree. The Notice shall be posted in a location accessible to all employees at each worksite and  
25 remain posted for the duration of the Consent Decree. As an alternative, should the property owner  
26 not approve the posting of the notice, ABM may mail the Notice to the employees, or distribute the  
27 notice with their paychecks. ABM will also provide the Notice to all new hires in its new hire  
28 information packet.

**Supervisory Accountability**

12. Defendant ABM's performance evaluation forms for its managers and supervisors within the jurisdiction covered by SEIU Local 87 will include an evaluation of the manager or supervisor's effectiveness in preventing discrimination, harassment and retaliation against and among the employees under his/her supervision, as well as the manager or supervisor's ability to manage diversity and deal effectively with employees of all races and national origins.

**Other Injunctive Relief**

13. Within thirty (30) days of the entry of this decree, in addition to the training referenced in Paragraph 8 above, ABM will provide separate training to Mohamed Almakrai and Mohamed Ali<sup>1</sup> concerning discrimination and harassment based on race/national origin and retaliation, and on supervising a diverse workforce. This training will be of two hours duration for Mr. Almakrai, and one hour duration for Mr. Ali.

14. A letter will be placed in Mohamed Almakrai's personnel file stating that complaints have been made against him by various Hispanic workers that he has discriminated and/or harassed them because of their race/national origin and that he retaliated against them when they complained of such discrimination and/or harassment, and instructing him that any future incidents of race/national origin discrimination or harassment or retaliation could result in serious disciplinary action, up to and including termination.

**Record Keeping and Reports**

15. Within sixty (60) days of the entry of this decree, ABM will mail counsel for the Commission with a copy of the schedule for the trainings or distribution of annual notices referenced in Paragraph 8 above.

16. Within thirty (30) days after completing each training session described in Paragraph 8, ABM will mail to counsel for the Commission a report containing the date of training, the name and position of the individual who conducted the training, an outline of the training content, a list of all attendees, and copies of all materials distributed at the training.

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<sup>1</sup>The training of Mohamed Ali, as a bargaining unit member of SEIU Local 87, will be to the extent authorized by SEIU Local 87.

17. Upon reasonable request from the Commission, ABM will mail to counsel for the Commission a copy of the lists referenced in Paragraph 10(b) above. When such lists are requested, the Commission will provide written notice of such requests, and ABM will provide the lists requested within twenty (20) days of the written request.

18. Once every three (3) months, to be measured beginning at the date of the entry of this Consent Decree, and continuing for the duration of this Consent Decree, ABM will report to counsel for the Commission any complaints within the jurisdiction currently covered by SEIU Local 87 of discrimination based on race/national origin or retaliation for making complaints of or opposing discrimination based on race/national origin, whether written or oral, and whether pursued through the grievance procedure of the collective bargaining agreement or not, and how those complaints were investigated and resolved.

#### **MONETARY RELIEF**

19. ABM will pay the sum of \$180,000.00 as emotional distress damages and in complete satisfaction of the Commission's claims against ABM as set forth in its Complaint. The Commission makes no claim for wage loss for any individual through this decree. This sum will be allocated by the Commission, at its sole discretion, among the charging parties and similarly situated individuals. This sum will be paid by check made out directly to each individual designated by the Commission, and will be mailed to them directly at an address provided by the Commission. ABM will provide an Internal Revenue Service (IRS) Form 1099 reflecting each individual's damages amount to said individual. Said checks will be sent by ABM within ten (10) days of transmission of the names of the individuals to whom the sum is being allocated, the amount of allocation to each individual, and a completed IRS Form W-9 and release for each individual. A copy of the checks, and any transmittal letter, will be sent to counsel for the Commission.

#### **EXPIRATION OF CONSENT DECREE**

20. This Consent Decree constitutes a full and final resolution of all the Commission's claims against ABM in this action. This Consent Decree will be in effect for three (3) years, and will expire at midnight of the date three (3) years after its entry by the Court, provided that ABM has substantially complied with the terms of this Consent Decree. ABM will be deemed to have



1 complied substantially if the Court has not made any findings or orders during the term of the  
2 Decree that ABM has failed to comply with any of the terms of this Decree.

3 On Behalf of Plaintiff:

On Behalf of Defendant:

4 Dated: September 13, 2011

Dated: September 13, 2011

5  
6 EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

LITTLER MENDELSON  
A Professional Corporation

7 /S/  
8 WILLIAM R. TAMAYO  
Regional Attorney

9 /S/  
10 MATTHEW MARCA  
Attorneys for Defendant  
ABM JANITORIAL SERVICES—  
NORTHERN CALIFORNIA  
erroneously sued as ABM INDUSTRIES, INC.

11 /S/  
12 DAVID OFFEN-BROWN  
Supervisory Trial Attorney

13 /S/  
14 CINDY O'HARA  
Senior Trial Attorney

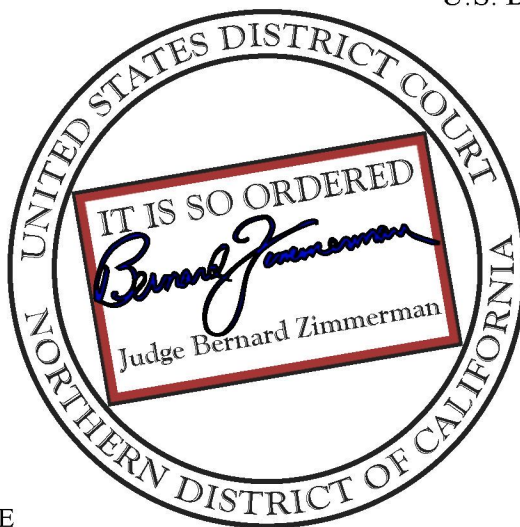
15 /S/  
16 DEBRA SMITH  
Senior Trial Attorney

17 **ORDER**

18 It is so ordered.

19 Dated: September 13, 2011

20  
21 U.S. District Court Judge





## NOTICE TO EMPLOYEES

This notice has been posted pursuant to the settlement of a lawsuit: *EEOC v. ABM Industries, Inc.* In accordance with the Consent Decree, ABM will provide training to management employees and forepersons; provide training to human resources personnel on how to deal with employee complaints of discrimination on the basis of race/national origin or retaliation and how to investigate complaints of discrimination on the basis of race/national origin or retaliation; institute policies to correct past and prevent future discrimination and retaliation, and promote diversity in the workplace; implement policies to ensure supervisor and manager accountability with regard to anti-discrimination and anti-retaliation practices; will enforce its policy regarding removal of discarded materials from a building in a consistent manner; and adopt measures for posting information concerning permanent assignments so that any employee can monitor the fairness of such assignments; for the next three years.

Federal law prohibits an employer from engaging in or allowing discrimination based on race/national origin. It is also unlawful for an employer to retaliate against any individual because he or she complains of discrimination, cooperates with the investigation of discrimination, participates as a witness or potential witness in any investigation or legal proceeding or otherwise exercises his or her rights under the law.

Any employee who is found to have retaliated against any other employee because such employee participated in this lawsuit will be subject to substantial discipline, up to and including immediate discharge.

Should you have any complaints of discrimination or retaliation you should contact (Company representative) \_\_\_\_\_ at \_\_\_\_\_.

Employees also have the right to bring complaints of discrimination or harassment to the U.S. Equal Employment Opportunity Commission, San Francisco District Office, 350 The Embarcadero, Suite 500, San Francisco, CA94618, (415) 625-5600.

This notice shall remain prominently posted until \_\_\_\_ date \_\_\_\_ [three years from the entry of the decree]. As an alternative, should the property owner not approve the posting of the notice, ABM may mail the notice to the employees or distribute the notice with their paychecks.

This Official Notice shall not be altered, defaced, covered or obstructed by any other material.